

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10

11 AMERIS BANK, doing business as
12 BALBOA CAPITAL
CORPORATION,

13 Plaintiff,

14 v.

15 ZARIZ TRANSPORT INC, and
16 YAAKOV ISRAEL GUZELGUL,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

Case No. 8:23-cv-02447-JWH-DFM

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR
DEFAULT JUDGMENT [ECF
No. 26]**

1 Before the Court is the unopposed motion of Plaintiff Ameris Bank, doing
2 business as Balboa Capital Corporation (“Balboa”), for default judgment against
3 Defendants Zariz Transport Inc. and Yaakov Israel Guzelgul.¹ The Court
4 concludes that this matter is appropriate for resolution without a hearing. *See*
5 Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of the
6 Motion and the absence of any opposition,² the Court **GRANTS** Balboa’s
7 Motion.

8 I. BACKGROUND

9 Balboa filed this action in December 2023. In its Complaint, Balboa
10 asserts two claims for relief: (1) breach of equipment financing agreement
11 against Zariz Transport; and (2) breach of personal guaranty against Guzelgul,
12 “an officer, director, shareholder, agent [or] owner of Defendant Zariz
13 Transport.”³

14 Specifically, Balboa alleges that Defendants entered into a pair of
15 contracts with Balboa in order to finance certain Collateral—Equipment
16 Financing Agreement No. 419188-000 (the “Financing Agreement”) with Zariz
17 Transport for a principal sum of \$168,497.62 and Guzelgul’s separate, written
18 personal Guaranty of that Financing Agreement.⁴ Balboa alleges that Zariz
19 Transport breached the Financing Agreement in June 2023 by failing to make
20
21

22 ¹ Pl.’s Mot. for Default J (the “Motion”) [ECF No. 26].

23 ² Specifically, the Court considered the documents of record in this action,
24 including: (1) Compl. (the “Complaint”) [ECF No. 1] (including its
25 attachments); (2) Reqs. for Clerk to Enter Default (the “Requests for Default”) [ECF
26 Nos. 15 & 21]; (3) Defaults by Clerk (the “Entries of Default”) [ECF
27 Nos. 18 & 25]; and (4) Motion (including its attachments).

28 ³ *See generally* Complaint; *see also id.* at ¶¶ 3 & 4.

⁴ *See generally id.*

1 the monthly payment due.⁵ Zariz Transport’s failure to make its monthly
2 payments put it into default on the Financing Agreement under the contract’s
3 terms.⁶ Following Zariz Transport’s default, Balboa demanded that Guzelgul
4 make the payments required under the Financing Agreement; Guzelgul also
5 failed to meet his obligations under the Guaranty.⁷ Pursuant to the Financing
6 Agreement, in light of Zariz Transport’s breach, Balboa declared the entire
7 balance under the contract—\$186,159.86—due immediately.⁸ Pursuant to the
8 terms of the contract, Balboa is also entitled to late charges in the amount of
9 \$855.26, plus pre-judgment interest at a rate of 10% *per annum* from the date of
10 breach (June 24, 2023).⁹ Defendants must also cover costs and reasonable
11 attorneys’ fees.¹⁰

12 Through this Motion, Balboa seeks a judgment against Zariz Transport
13 and Guzelgul, jointly and severally, for the following sums:¹¹

- 14 • the contractual amount due under the Financing Agreement totaling
15 \$186,159.86;
 - 16 • \$28,305.00 in prejudgment interest at a rate of 10% *per annum* (\$51.00 per
17 day as of December 30, 2024—555 days from June 24, 2023);
 - 18 • \$603.00 in litigation costs incurred; and
- 19
20
21

22 ⁵ *Id.* at ¶ 15.

23 ⁶ *Id.* at ¶ 16.

24 ⁷ *Id.* at ¶ 23.

25 ⁸ *See generally id.*

26 ⁹ *Id.*

27 ¹⁰ *Id.*

28 ¹¹ Motion 12:13-13:12.

- \$7,323.19 in attorneys’ fees, calculated pursuant to the Local Rules, *see* L.R. 55-3.¹²

II. LEGAL STANDARD

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). “If the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff’s request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.” Fed. R. Civ. P. 55(b)(1). “In all other cases, the party must apply to the court for a default judgment.” Fed. R. Civ. P. 55(b)(2).

This Court’s Local Rules require an applicant for default judgment also to file a declaration that conforms to the requirements of Rule 55(b) of the Federal Rules of Civil Procedure and that includes the following information:

- (a) When and against which party the default was entered;
- (b) The identification of the pleading to which default was entered;
- (c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;
- (d) That the Servicemembers Civil Relief Act (50 U.S.C. App. § 521) does not apply; and
- (e) That notice of the application has been served on the defaulting party, if required by F[ed.] R. Civ. P. 55(b)(2).

L.R. 55-1.

¹² *See generally id.*

1 If the applicant meets the procedural requirements, then “[g]ranting or
2 denying a motion for default judgment is a matter within the court’s discretion.”
3 *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp. 2d 916, 919 (C.D.
4 Cal. 2010) (internal quotation omitted). In exercising its discretion, a court may
5 consider the following factors:

6 (1) the possibility of prejudice to the plaintiff, (2) the merits of
7 plaintiff’s substantive claim, (3) the sufficiency of the complaint,
8 (4) the sum of money at stake in the action; (5) the possibility of a
9 dispute concerning material facts; (6) whether the default was due to
10 excusable neglect, and (7) the strong policy underlying the Federal
11 Rules of Civil Procedure favoring decisions on the merits.

12 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986) (the “*Eitel factors*”).

13 “Once a party’s default has been entered, the factual allegations of the
14 complaint, except those concerning damages, are deemed to have been admitted
15 by the non-responding party.” *Landstar*, 725 F. Supp. 2d at 920. “The court,
16 however, must still consider whether the unchallenged facts constitute a
17 legitimate cause of action, since a party in default does not admit mere
18 conclusions of law.” *Id.* (internal quotation omitted). “If the court determines
19 that the allegations in the complaint are sufficient to establish liability, it must
20 then determine the amount and character of the relief that should be awarded.”
21 *Id.* (internal quotation omitted).

22 “Plaintiffs are required to prove all damages sought in the complaint, and
23 such damages ‘shall not be different in kind from, or exceed in amount, what is
24 demanded in the pleadings.’” *Espresso Republic, LLC v. Coffee*, 2016 WL
25 7176564, at *2 (C.D. Cal. Dec. 7, 2016) (quoting Fed. R. Civ. P. 54(c)).

26 “‘Plaintiff’s burden in “proving up” damages is relatively lenient,’” but
27 “sufficient facts, necessary to determine damages, must be provided to the
28 court.” *Id.* (quoting *Philip Morris USA, Inc. v. Castworld Products, Inc.*, 219

1 F.R.D. 494, 498 (C.D. Cal. 2003)). “If the amount claimed in a judgment by
2 default is unliquidated, the applicant may submit evidence of the amount of
3 damages by declarations.” L.R. 55-2. “Notice must be given to the defaulting
4 party of the amount requested.” *Id.*

5 III. ANALYSIS

6 A. Procedural Requirements

7 Balboa satisfied the procedural requirements for the entry of default
8 judgment by the Court. Pursuant to Rule 55, Balboa did not move for entry of
9 default judgment until after default was entered against Defendants by the
10 Clerk.¹³ Additionally, Balboa provided all of the information required by the
11 Local Rules of this Court.¹⁴

12 B. The *Eitel* Factors

13 In this case, the *Eitel* factors collectively weigh in favor of awarding
14 default judgment.

15 1. Possibility of Prejudice to Plaintiff

16 The first *Eitel* factor considers whether the plaintiff will be prejudiced if
17 default is not entered. If the Motion is not granted, then, in view of Defendants’
18 failure to engage in this action at all, Balboa “will likely be without other
19 recourse for recovery.” *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d
20 1172, 1177 (C.D. Cal. 2002). This factor therefore weighs in favor of granting
21 the Motion.

22 2. Merits of Plaintiff’s Claim and Sufficiency of Complaint

23 The second and third *Eitel* factors assess the merits of the plaintiff’s
24 substantive claim and the sufficiency of the complaint. Those factors require the

25 ¹³ Compare Entries of Default (entered April 10, 2024, with respect to Zariz
26 Transport, and June 13, 2024, with respect to Guzelgul) with Motion (filed
27 June 18, 2024).

28 ¹⁴ See Requests for Default.

1 plaintiff to state a claim upon which it may recover. *See, e.g., Danning v. Lavine*,
2 572 F.2d 1386, 1388 (9th Cir. 1978).

3 Under California law, “[t]he elements of a cause of action for breach of
4 contract include the existence of a contract, the plaintiff’s performance or
5 excuse for nonperformance, the defendant’s breach, and resulting damages to
6 the plaintiff.” *J.B.B. Inv. Partners Ltd. v. Fair*, 37 Cal. App. 5th 1, 9, *as modified*
7 (July 1, 2019). “The first element—the existence of a contract . . . requires
8 parties capable of contracting, their consent, a lawful object, and a sufficient
9 cause or consideration.” *Id.* “When a contract is reduced to writing,” as it is in
10 this case, “the intention of the parties is to be ascertained from the writing
11 alone, if possible.” Cal. Civ. Code § 1639. “The language of a contract is to
12 govern its interpretation, if the language is clear and explicit, and does not
13 involve an absurdity.” Cal. Civ. Code § 1638. “Interpretation of a contract is
14 solely a question of law unless the interpretation turns upon the credibility of
15 extrinsic evidence.” *Badie v. Bank of Am.*, 67 Cal. App. 4th 779, 799 (1998).

16 Here, Balboa has plausibly alleged that valid, written contracts for the
17 financing of the Collateral—the Financing Agreement and Guaranty—existed,
18 and that Balboa is entitled to enforce those contracts.¹⁵ Balboa has similarly
19 plausibly alleged it performed pursuant to those contracts; that Defendants
20 breached; and that those breaches caused Balboa to suffer damages.¹⁶ Because
21 Defendants have failed to appear, they have not asserted any defenses. As such,
22 the second and third *Eitel* factors favor Balboa.

23
24
25
26 ¹⁵ See generally Complaint; Motion; see also Complaint, Exs. A & B (the
27 contracts).

28 ¹⁶ See Complaint.

1 **3. Sum of Money at Stake in the Action**

2 With respect to the fourth *Eitel* factor, “[d]efault judgment is disfavored
3 where the sum of money at stake is too large or unreasonable in relation to
4 defendant’s conduct.” *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998, 1012 (C.D.
5 Cal. 2014). Here, Balboa requests a total of \$222,391.05—which includes the
6 principal amount due pursuant to the defaulted EFA of \$186,159.86; \$28,305.00
7 in prejudgment interest at a rate of 10% *per annum* (\$51.00 per day as of
8 December 30, 2024—555 days from June 24, 2023); \$603.00 in litigation costs
9 incurred; and \$7,323.19 in attorneys’ fees, calculated pursuant to the Local
10 Rules, *see* L.R. 55-3.¹⁷ This amount is plainly contemplated in the Financing
11 Agreement itself or the Local Rules; as such, it is reasonable for purposes of the
12 *Eitel* inquiry. Thus, the fourth *Eitel* factor weighs in favor of default judgment.

13 **4. Possibility of a Dispute Concerning Material Facts**

14 The fifth *Eitel* factor “considers the possibility that material facts are
15 disputed.” *Vogel*, 992 F. Supp. 2d at 1012. Upon entry of default, all well-
16 pleaded factual allegations are deemed true—except those pertaining to
17 damages. *TeleVideo Systems Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987);
18 *Elektra Entm’t Group Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005)
19 (“Because all allegations in a well-pleaded complaint are taken as true after the
20 court clerk enters default judgment, there is no likelihood that any genuine issue
21 of material fact exists.”). Because Defendants failed to appear in this action, it is
22 unlikely that disputes as to material facts will arise. *See id.* Accordingly, this
23 factor favors default judgment.

24
25
26
27
28 ¹⁷ *See generally* Motion.

